

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NIKKI POOSHS,

Plaintiff,

v.

PHILLIP MORRIS USA, INC., et al.,

Defendants.

No. C 04-1221 PJH

**ORDER**

The court issues this order in the hope of achieving a settled final version of the parties' lists of trial exhibits and witnesses, and designations of written discovery responses and written discovery excerpts for witnesses who will not testify.

The court is in receipt of plaintiff's most recent "Supplemental/Amended Exhibit List" (Doc. 393), filed December 16, 2014, in response to the court's December 2, 2014 Order re Defendants' Categorical Objections to Plaintiff's Evidence (Doc. 392). No later than January 30, 2015, defendants shall file any objections to plaintiff's list of exhibits.

On November 1, 2012, defendants filed a "Witness List" (Doc. 249), an "Exhibit List" (Doc. 250), and "Page and Line Designations for the Testimony of Trial Witnesses" (Doc. 252). On June 19, 2013, defendants filed a "Joint List of Revised Trial Exhibits" (Doc. 322). Plaintiff filed objections to the designations of page and line designations (Doc. 328). On October 17, 2013, defendants filed an "Amended Joint Witness List" (Doc. 349), "Revised Page and Line Designations for Testimony of Trial Witnesses" (Doc. 350), and a "Joint List

1 of Revised Trial Exhibits" (Doc. 355). Plaintiffs filed objections to the exhibit list (Docs.  
2 356). Apart from the June 19, 2013 and October 17, 2013 amendments, it does not appear  
3 that defendants have amended these lists, but should they wish to do so in accordance  
4 with any subsequent evidentiary rulings by the court, they must file any amended lists or  
5 designations no later than January 15, 2015. If they wish to stand on their prior  
6 lists/designations, they should so advise the court, and specifically identify by docket  
7 number the lists/designations they wish to proceed with. If plaintiff wishes to file objections  
8 to any amended lists or designations filed by defendants, she must do so no later than  
9 January 30, 2015.

10 Plaintiffs filed her original "List of Deposition Excerpts for Witnesses Who Will Not  
11 Testify in Person" (Doc. 254), "List of Written Discovery Responses" (Doc. 261-1), "Exhibit  
12 List" (Docs 261-3, 261-4, 261-5, 261-6), and "Witness List" (Doc. 261-7) on November 1,  
13 2012. The subsequent revisions are too numerous to set forth here, but it appears that  
14 apart from the May 21, 2014 filings (Docs. 379, 380, and 381), which were ordered stricken  
15 by the court (Doc. 387), the most recently filed are the "Second Supplemental/Amended  
16 List of Written Discovery Responses to be Offered at Trial filed July 9, 2013 (Doc. 334), the  
17 "Third Supplemental Witness List" filed September 3, 2013 (Doc. 344), and the "Fifth  
18 Supplemental/Amended Designation of Deposition Excerpts for Witnesses Who Will not  
19 Testify in Person" filed November 1, 2013 (Doc. 361), plus the December 16, 2014 exhibit  
20 list noted above. Defendants filed objections to the list of written discovery responses, the  
21 witness list, and the deposition designations (Docs. 347, 357, 362).

22 No later than January 15, 2015, plaintiff shall revise the list of written discovery  
23 responses, the witness list, and/or the designation of deposition excerpts for witnesses who  
24 will not testify in person, in accordance with the recent evidentiary rulings, including but not  
25 limited to the rulings in the Order re Plaintiff's Offer of Proof (Doc. 391) and the Order re  
26 Defendants' Categorical Objections (Doc. 392). Plaintiffs may not add any new witnesses  
27 or designations, but may of course withdraw any previous designations. If defendants wish  
28 to file objections, they must do so no later than January 30, 2015. Presumably there will be

1 no need for defendants to file counter-designations, except to the extent that plaintiffs  
2 include designations that were included in the "Fifth Supplemental/Amended Designation of  
3 Deposition Excerpts" (Doc. 361) to which defendants objected as "additional" and  
4 "untimely" in their December 6, 2013 filing (Doc. 362).

5 If plaintiff wishes to get this case to trial in 2015, her counsel must submit  
6 lists/designations which truly comply with the court's prior orders as further clarified by the  
7 recent orders regarding the offer of proof and the categorical objections.

8  
9 **IT IS SO ORDERED.**

10 Dated: December 23, 2014



11 \_\_\_\_\_  
12 PHYLLIS J. HAMILTON  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28